IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 192 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

HEMENDRA FAMILY TRUST

Appearance:

MR MH JOSHI FOR MR MANISH R BHATT for Applicant.

NOTICE NOT RECD BACK for Respondent.

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 07/11/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

1 The Income Tax Appellate Tribunal has referred the following two questions for the opinion of this Court in relation to the assessment years 1982-83 and 1983-84 at the instance of the Commissioner :

1 "Whether, the Appellate Tribunal is right in law and on facts in holding that the income of the assessee trust cannot be taxed in the hand of Shri Hemendra Patel?"

2 "Whether, the Appellate Tribunal is right in relying on the decision of the Gujarat High Court particularly when the department contended that the decision of the Supreme Court in the case of McDowell was squarely applicable ?"

2 We have heard Mr.M.H.Joshi appearing on behalf of the applicant-revenue. Though served none appears for the respondent-assessee. Our attention has been invited by Mr.Joshi to the decision of this Court rendered on 6/11/2000 in Income Tax Reference No.238 of 1985 between the same parties. Following the said decision as no distinguishing feature is pointed out, the Tribunal was right in holding that income of the assessee trust could not be taxed in hands of Shri Hemendra Patel. In view of the fact that the second question is only an aspect of the controversy and is more argumentative in nature, we decline to answer the same in light of our answer to question No.1.

3 Therefore, our answer to question No.1 is in the negative i.e. in favour of the assessee and against the revenue.

4 The reference stands disposed of accordingly with no order as to costs.

Sd/- Sd/-

(M.S.Shah,J) (D.A.Mehta,J)

m.m.bhatt